

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF MISSISSIPPI
3 Case No. 11-13463-dwh

4 - - - - - x
5 In the Matter of:
6

7 MARITIME COMMUNICATIONS/LAND MOBILE, LLC
8

9 Debtor.
10
11 - - - - - x

12
13 United States Bankruptcy Court
14 Thad Cochran U.S. Courthouse
15 703 Hwy 145 North
16 Aberdeen, Mississippi
17

18 November 15, 2012

19 9:35 a.m.
20
21

22 B E F O R E :

23 HON. DAVID W. HOUSTON, III

24 U.S. BANKRUPTCY CHIEF JUDGE
25

1 Motion to Strike Portions of the Objection of Skytel To
2 Confirmation and Motion in Limine filed by Craig M. Geno on
3 behalf of Maritime Communications/Land Mobile, LLC

4
5 First Amended Chapter 11 Plan filed by Craig M. Geno on
6 behalf of Maritime Communications/Land Mobile, LLC

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25 Transcribed by: Sherri L. Breach, CERT*D-397

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1 MR. GENO: Nothing further, Your Honor.

2 THE COURT: All right. Mr. Lupinacci?

3 MR. LUPINACCI: No questions, Your Honor.

4 THE COURT: Mr. Solomon.

5 MR. SOLOMON: No questions.

6 THE COURT: Mr. Spencer?

7 MR. SPENCER: No questions, Your Honor.

8 THE COURT: Mr. McCullough?

9 MR. MCCULLOUGH: No questions, Your Honor.

10 THE COURT: Mr. Drew?

11 MR. DREW: No questions, Your Honor.

12 THE COURT: Mr. Ruhl?

13 MR. RUHL: If it please the Court, Danny Ruhl for

14 Skytower entities.

15 CROSS-EXAMINATION

16 BY MR. RUHL:

17 Q Good morning, Ms. DePriest.

18 A Good morning.

19 Q Good to see you again. I think Mr. Geno asked you if

20 there were any promises or agreements between yourself or

21 Mr. DePriest and anyone else pursuant to which you or he

22 would get any direct benefit and you said no; is that right?

23 A Absolutely not.

24 Q Okay.

25 A (Indiscernible).

1 Q Okay. So you were -- there were no promises or
2 agreements that you --

3 A (Indiscernibles).

4 Q Okay. Fair enough.

5 Do you -- are you familiar with -- I'm sure you
6 are -- the post-petition DIP lending or DIP loan made by
7 Southeastern Commercial Finance to the debtor?

8 A Yes, I am.

9 Q Okay. If I understood his testimony yesterday, Mr.
10 Reardon said that the financing that the debtor ultimately
11 receives from Southeastern Commercial Finance post-petition
12 was not available to the debtor pre-petition. I may have --
13 is that right?

14 A That's correct.

15 Q Okay. Can you tell me why?

16 A Yes. We had no reasonable means of repaying that. The
17 -- we had a hearing designation over -- hanging over us and
18 there was -- we could not even continue to prosecute that or
19 continue to defend that. And so there is no available
20 financing to us anywhere.

21 Q And how did the bankruptcy filing change the
22 availability of financing?

23 A With the petition in Bankruptcy Court, there was
24 provision -- a use of provision for administrative fees to
25 be paid upon the sale, and there's also a more reasonable

1 expectation that through the Second Thursday there can be --
2 creditors can be paid.

3 Q Okay.

4 A Through the sale and the closing. We had -- we had --
5 were locked up in the FCC in terms of closing any
6 transactions. So while there were contracts in existence,
7 there was no cash flow. We couldn't close those
8 transactions.

9 Q Okay.

10 A And until we could close those transactions under the
11 protection of Second Thursday, we would not have any cash
12 flow per the creditors.

13 Q Okay. Thank you.

14 At the time the debtor took on its secured debt,
15 did it notify those lenders who -- who -- who lent the money
16 that resulted in the secured claims of any -- let me back
17 up. At the time the debtor took on its secured debt, did it
18 -- did it notify any of those lenders of the Skytel
19 challenges in connection with the licenses?

20 A Yes. We were working with Jim Ostein through Pinnacle
21 and he was apprised at all times of the status of the
22 proceedings with the FCC.

23 Q Okay. What -- which -- which proceedings are you
24 referring to specifically, all --

25 A All the proceedings.

1 Q -- of the proceedings?

2 A We kept him apprised of all of the objections that were
3 being -- you know, other documents anybody (indiscernible)
4 and did not. But I'm saying, we kept him advised that were
5 tied up in litigation with Mr. Havens and -- you know, and
6 trying to get the option licenses and -- which had been
7 assigned to us freed up for operation, sales, transfers,
8 leases, that sort of thing.

9 Q Okay. And you had those discussions on -- on or --
10 with those secured lenders on or before the time they lent
11 the money to the debtor? You had those sorts of discussions
12 --

13 A Oh, yes.

14 Q Okay.

15 A Well, actually, I think some of the lending took place,
16 especially the initial debt package with -- happened before
17 we filed for the auction. So we had that -- that lending in
18 place for financing near the auction. So that would have
19 all happened in the spring of 2005 before the auction even
20 took place.

21 Q Okay.

22 A So they -- that would not have been the (indiscernible)
23 at that time.

24 Q Which lenders are you referring to?

25 A Pinnacle.

1 Q Pinnacle? Okay.

2 A Yes.

3 Q Any others of the debtors' secured lenders?

4 A No.

5 Q Okay. Are you're familiar with the guarantees that Mr.

6 DePriest provided in connection with some of the secured and

7 unsecured debt in this case, or --

8 A Yes.

9 Q -- secured debt or unsecured claims? Yes?

10 A Yes. Uh-huh.

11 Q Okay. Do you know if any of those holders of those

12 guarantees have in any way sought to collect those or sought

13 repayment under the guarantees?

14 A They have.

15 Q Okay. Can you tell me about that?

16 A Mike Webster has filed an action prior to the -- I

17 think prior to the filing of bankruptcy. And I would have

18 to look at the list before -- if I -- for any others. But,

19 you know, we've been -- there have been discussions. I

20 think Don and I have been in discussions with them about the

21 proceedings so they knew that there -- there was more of an

22 opportunity for them to recover, especially after the filing

23 of the bankruptcy that there was more of an opportunity for

24 them to recover, you know, if we were allowed to pursue the

25 Second Thursday and -- and be paid.

1 Q Okay.

2 A So I think that they -- they realized that it was not
3 going to be beneficial to -- and they certainly have been
4 involved in the proceedings, like Southeast Commercial
5 Finance, some of those parties or the same recipients of
6 guarantees.

7 Q Okay. Anyone besides Mr. Webster that you specifically
8 recall filed an action to seek repayment of --

9 A Not that I can recall right now. I can't.

10 Q Okay. Has -- has your husband performed under any of
11 the guarantees?

12 A He may have. I believe that -- and I don't remember --
13 again, I'm not remembering whether one of them was the old
14 (indiscernible) or -- or -- okay. (Indiscernible).

15 Q Ms. DePriest, the guarantee documents were introduced
16 and admitted into evidence yesterday. They were produced
17 marked highly confidential, so I'm -- I don't want to put
18 this on the screen.

19 MR. RUHL: But --

20 THE WITNESS: Okay.

21 MR. RUHL: -- may I approach the witness, Your
22 Honor? What I have here is a summary of the guarantees and
23 the names of the people --

24 THE COURT: Okay. You can approach the witness.

25 That's fine.

1 BY MR. RUHL:

2 Q And, Ms. DePriest, if you need to see the guarantees to
3 confirm that information, that's fine with me,. but I just
4 wanted you to use that document to refresh your recollection
5 of the parties who obtained the guarantees so you can answer
6 the question of -- that I asked before about if Mr. DePriest
7 had performed under any of the guarantees?

8 A I do believe that Fred Gode (ph) has been paid some
9 measure, but probably not the interest. He's been paid
10 something.

11 Q Anybody else?

12 A And I think that's evident in the amount of his claim.

13 Q Okay.

14 A That his -- his claim is less than the other amount of
15 his -- of the guarantee.

16 Q Okay. Is that it?

17 A So I think that's -- that was the one that was -- that
18 had come to mind.

19 Q Any others as you reviewed the list?

20 A It's some mighty fine print.

21 Q I'm sorry.

22 A I'm trying. But I -- I think that's the only one.

23 Q Okay. Thank you.

24 MR. RUHL: May I approach?

25 BY MR. RUHL:

1 Q The loan to secured creditor in the bankruptcy case is
 2 collateral -- at this point is Collateral Plus Fund,
 3 correct?
 4 A That's correct.
 5 Q Okay. They got their debt assigned to them by Pinnacle
 6 Bank, isn't that right?
 7 A That's correct.
 8 Q Okay. When did -- when did that --
 9 A A portion of that.
 10 Q When did that assignment occur? It was paid -- it was
 11 after the bankruptcy case --
 12 A It was after the bankruptcy.
 13 Q Okay. You said a portion of the -- of the debt was
 14 assigned. Which --
 15 A I'm saying a portion is what Southeast Commercial
 16 Finance holds in the way of debt came from Pinnacle. They
 17 also had some of their own claim.
 18 Q Okay. And you said Southeastern Commercial. Did --
 19 A I --
 20 Q -- you mean Collateral Plus?
 21 A Collateral Plus, I mean.
 22 Q Okay. Do you recall how much they had already, a
 23 ballpark figure?
 24 A \$7 or \$8 million, maybe.
 25 Q Okay.

1 A About.

2 Q But they got the entire Pinnacle Bank claim assigned to

3 them?

4 A Yes, which was an additional 8 million, which would put

5 their debt under their claim at about 15 million.

6 Q Okay. Whatever amounts in the debtors' schedules were

7 admitted as part of the debtors' disclosure statement, you

8 wouldn't -- you wouldn't dispute those amounts, would you?

9 A There will be some -- there may be some objections to

10 some of the -- some of the claims.

11 Q No. I mean, the amount that the debtor listed -- that

12 you listed for the Pinnacle Bank --

13 A Oh, no.

14 Q Okay. Okay. Would the -- were the debtors' secured

15 creditors threatening any adverse action against the debtor

16 in connection with any defaulted loans prior to the

17 bankruptcy case, or let's just narrow it down to the six

18 months or so prior to the bankruptcy case?

19 A There were -- there was some heated discussions, I

20 believe, about, you know, expectations and desire to be paid

21 and need to be paid.

22 Q Okay. Is that it?

23 A I think we knew that we had, you know, not wanted to

24 get any additional funds. And that there was the potential

25 for Pinnacle to carve a loan and I --

1 Q Okay.

2 A -- but I -- they obviously didn't do it before the

3 bankruptcy was filed, but afterwards.

4 Q Okay. And do you recall giving testimony at a 341

5 meeting at -- towards the beginning of this case, the first

6 meeting of creditors where the U.S. Trustee questioned you?

7 A I do.

8 Q Okay. That was sometime around September of 2011?

9 A Probably.

10 Q Okay. Isn't it correct that Donald DePriest was an

11 authorized signer in Maritime?

12 A He was.

13 Q Okay. And had some sort of manager role?

14 A I don't remember him having a title of -- any kind of

15 management title. He had -- he was an authorized signer.

16 Q Okay. This is a portion of the transcript from the 341

17 meeting. It's on page 12, line 7 through 22, and this was

18 part of the questioning that the U.S. Trustee did. Her

19 question was, "Okay. Who manages the debtor? Who is the

20 managing member of the debtor?" Could you tell me what your

21 answer was?

22 A Yes. "John Reardon."

23 Q Can you read --

24 A Oh, okay.

25 Q -- lines 19 through 22.

1 A Oh. What line?

2 Q Lines 19 through 22.

3 A Okay. "The -- on -- sort of the onsite manager is John
4 Reardon in the Virginia office, and then I provide
5 supervision, and then Don DePriest does some things as a
6 manager as well."

7 Q Okay. Thank you.

8 This was -- Ms. DePriest, this is on page 109 of
9 that transcript and these are my questions to you. My
10 question was, "Okay. Now we talked a little bit before
11 about your husband, Donald DePriest, rolling (sic) the
12 company. Did I get it right that you said he is essentially
13 -- has some management contract in place, some management
14 role in one shape or form? Can you tell me his -- you know,
15 describe more, I guess, his management role in the company
16 and what role he takes."

17 Mr. Geno said, "I don't think she said he played a
18 management role," and I asked, "Okay. Well, can you tell
19 me?" And can you tell me what your answer to that question
20 was?

21 A He has a -- he has a contract that --

22 Q Can you -- can you actually tell me what the answer in
23 your deposition was?

24 A He has a management contract in so many -- well, I'm
25 trying to clarify what I was thinking.

1 Q And you'll have the opportunity in a Second, okay?

2 A Okay.

3 Q I asked --

4 MR. GENO: I think the witness has a right to
5 explain her answer even to Mr. Ruhl's question and he's
6 cutting her off as she's trying to explain the answer that
7 was taken a little bit out of context.

8 MR. RUHL: Your Honor, I'll let her do that. I
9 want the deposition testimony read into the record and then
10 I'll let her explain her --

11 THE COURT: All right. You can do that and then
12 you can -- Ms. DePriest, you can explain your answer and
13 I'll certainly give you an opportunity to do that.

14 MR. RUHL: Thank you.

15 BY MR. RUHL:

16 Q Following along after -- on Page 110, line 2, I -- my
17 question was, "He has a management contract. Okay. So what
18 does he do for the company under that management contract or
19 any other management capacity?" Could you read what your
20 answer was on line 6 and 7?

21 A "He was assisting me in raising the financing for the
22 company."

23 Q Okay. "Okay. Has he ever been an authorized signed
24 for the debtor company," and your answer was?

25 A "Yes. He is an authorized signer."

1 Q And I asked, "He's still an authorized signer?"

2 A "Yes."

3 Q Okay. Now -- thank you, Ms. DePriest. I appreciate
4 it. And you can offer any clarifying comments that -- about
5 that sworn testimony that you would like.

6 A Well, after you asked me that question I -- I saw
7 eventually this contract that he had signed and I had --
8 that I wasn't thinking about when we were talking about
9 that. I -- I was thinking more about what he actually did
10 and what he actually did was assist with the financing. He
11 did not do any day to day operations in the company. So
12 that's what I was thinking, more in terms of management
13 where he would make suggestions, but he -- he wasn't really
14 managing in that sense. Actually, that's where I was going
15 when -- when you mentioned that. Yes, I do remember the
16 contract. He has a management contract.

17 Q Okay. Thank you.

18 MR. RUHL: That's all the questions I have, Your
19 Honor.

20 THE COURT: All right. Redirect?

21 MR. GENO: No questions, Your Honor. And that
22 concludes the debtors' presentation.

23 THE COURT: All right. Ms. DePriest, you may step
24 down.

25 THE WITNESS: Thank you.

I N D E X
T E S T I M O N Y

1	DLJ'S			
2				
3				
4	DLJ'S			
5	WITNESS	EXAM BY	PAGE	LINE
6	Sandra DePriest	By Mr. Geno	11	11
7		By Mr. Ruhl	14	15
8				
9	Warren Havens	By Mr. Ruhl	28	61
10		By Mr. Geno	72	1
11		By Mr. Bensinger	78	20
12		By Mr. Ruhl	80	9
13				
14	James Chen	By Mr. Ruhl	82	12
15		By Mr. Kirk	95	17
16		By Mr. Ruhl	99	11
17		By Mr. Kirk	103	11
18		By Mr. Spencer	111	1
19		By Mr. Ruhl	116	13
20		By Mr. Geno	141	21
21		By Mr. Ruhl	143	4
22				
23	Robert Keller	By Mr. Geno	144	10
24				
25				

I N D E X

E X H I B I T S

	PARTY	NO	DESCRIPTION	ID.	EVID.
5	Skytel	5	11/9/12 FCC Order	--	37
6	Skytel	6	10/2/12 Order	--	38
7	Skytel	7	Order lifting stay	--	47
8	Skytel	8	Mr. Chen's resume	--	105
9	Skytel	9	Mr. Chen's summary	--	105
10	Skytel	10	Material review list	--	106

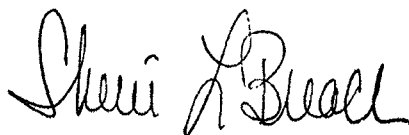
I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

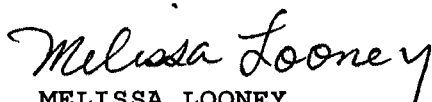


SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber

CERT*D -397

I, Melissa Looney, certify that the foregoing transcript is a true and accurate record of the proceedings.



MELISSA LOONEY

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Date: November 30, 2012